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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

KERRY SHANE ABELA,

Defendant and Appellant.

H045740

(Santa Clara County  
Super. Ct. No. 144348)

Defendant Kerry Shane Abela appeals the denial of his petition for reclassification of his felony conviction for receiving stolen property (Pen. Code, § 496)<sup>1</sup> to a misdemeanor pursuant to section 1170.18. We affirm.

**I. STATEMENT OF THE FACTS AND CASE**

On July 8, 1990, a residential burglary occurred on Ashburton Drive in San Jose. The property owner prepared a list of the property taken, which included a vintage car valued at \$6,000, household items, tools, and electronic equipment. The owner estimated the total value of the property taken was over \$10,000.

On September 17, 1990, Abela was charged by information with residential burglary (§§ 459, 460.1; count 1), driving or taking a vehicle (Veh. Code, § 10851; count 2), and felony receiving stolen property (§ 496; count 3). On January 24, 1991, Abela pleaded guilty to felony receiving stolen property (§ 496; count 3), and the remaining charges were dismissed. On February 19, 1991, the trial court suspended

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<sup>1</sup> All further unspecified statutory references are to the Penal Code.

imposition of sentence and placed Abela on formal probation for a period of three years and ordered him to serve 120 days in county jail.

On February 14, 2018, Abela filed a petition for reclassification of his felony receiving stolen property conviction (§ 496) to a misdemeanor pursuant to section 1170.18. The trial court denied Abela's petition on the ground that the record showed that the value of the stolen property exceeded \$950.

Abela filed a timely notice of appeal on April 6, 2018.

## **II. DISCUSSION**

Under Proposition 47, a felony conviction for receiving stolen property may be reduced to a misdemeanor where the value of the stolen property does not exceed \$950, and where, as here, the petitioner has no prior convictions for an offense specified in section 667, subdivision (e)(2)(C)(iv) or for an offense requiring him to register as a sex offender pursuant to section 290, subdivision (c). (§ 1170.18, subds. (f)-(i).) “The ultimate burden of proving section 1170.18 eligibility lies with the petitioner. (See Evid. Code, § 500.)” (*People v. Romanowski* (2017) 2 Cal.5th 903, 916.)

When a defendant files an application for relief under Proposition 47, the court conducts an initial screening, which is limited to a determination of whether the applicant has presented a *prima facie* basis for relief under section 1170.18. (*People v. Washington* (2018) 23 Cal.App.5th 948, 953 (*Washington*).) This initial screening is based on a review of the petition itself, generally prepared by the petitioner in pro per, as well as the record of conviction. “If the court finds, based on the petition and its review of the record, that there is a *prima facie* basis for relief, the court should then hold ‘a full qualification hearing at which any additional evidence may be received on the issue of eligibility.’ ” (*Id.* at pp. 955-956.)

In *Washington*, the court held that checking a box on a form petition stating that the value of the stolen property is less than \$950 may be sufficient to establish a *prima facie* case without additional evidence. (*Washington, supra*, 23 Cal.App.5th at p. 953.)

The defendant in *Washington* filed his own handwritten petition stating the value of the property was \$450. The petition did not include any additional information or description of the property. The court held that the petition was sufficient to establish a prima facie basis for relief. The court's conclusion was based in part on the fact that the Los Angeles County form petition that could have been used in the case contained a box stating, "The amount in question is less than \$950." The form petition did not contain any other space in which to describe the property or provide additional information about its value. (*Id.* at p. 955.) The court found that under such circumstances, checking the box on the form petition would have been sufficient. Otherwise, "[n]o petitioner would meet the prima facie burden without crafting his or her own petition in derogation of the form adopted by the court, or modifying the official form to include handwritten statements in the margins or attaching additional paperwork." (*Id.* at p. 955.)

The Santa Clara County form petition that Abela used in this case did not contain a box to check indicating that the value of the property was less than \$950, nor did it contain any space in which to provide a description of the property. Abela notes that he filled in every available box on the form petition, checked all of the necessary squares and requested a hearing. Citing *Washington* as support, Abela argues that his proper completion of the form petition was sufficient to establish a prima facie basis for relief.

We agree with the *Washington* court that "[i]t is unrealistic to expect Proposition 47 petitioners, who are often self-represented either from prison or upon release, to marshal evidence at the initial stage to establish that the stolen property at issue in their convictions did not exceed \$950 at the time it was stolen." The *Washington* court further stated: "[i]f the prosecution chooses to oppose a Proposition 47 petition on the ground the value of the stolen property exceeds \$950, and *this fact is not established by the record of the initial plea or conviction*, the superior court should . . . hold an evidentiary hearing at which the value of the property taken may be considered." (*Washington, supra*, 23 Cal.App.5th at p. 957, italics added.)

However, in the present case, although Abela fully completed his form petition, he is not entitled to an evidentiary hearing under *Washington*. As the trial court noted in denying his petition, the record in this case adequately established that the value of the stolen property was greater than \$950. Specifically, the record includes a detailed list of all of the items that were stolen and their individual values. The estimated total value of the stolen property was \$10,000, \$6,000 of which was a vintage car. As a result, despite the fact that Abela adequately completed the form petition, his conviction for felony receiving stolen property is not eligible for reclassification to a misdemeanor pursuant to section 1170.18. As established by the record, the value of the stolen property exceeded \$950.

### **III. DISPOSITION**

The order is affirmed.

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Greenwood, P.J.

WE CONCUR:

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Grover, J.

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Danner, J.

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